IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.43768-M of 2004

Date of Decision: January 10, 2007

Narottam Singh Dhillon and another

...Petitioners

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.H.S.Mattewal, Senior Advocate with
Mr.Sandeep Wadhawan, Advocate,
for the petitioners.

Mr.A.G.Masih, Sr.DAG, Punjab,
for the State.

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This order will dispose of Criminal Misc.Nos.43768-M of 2004 (Narottam Singh Dhillon and another v. State of Punjab) and 58233-M of 2004 (Manjinder Singh Kang v. State of Punjab). The challenge in these petitions is to orders passed by Special Judge, Ropar and Addl.Sessions Judge-Cum-Special Judge, Amritsar, whereby the applications filed by the petitioners, seeking release of the operation of Bank accounts/lockers/FDRs have been dismissed.

These petitions have been heard together as common question of law arises in these petitions. (The facts are being taken from Crl.Misc.No.43768-M of 2004).

Narottam Singh Dhillon and his wife have filed Crl.Misc.No.43768-M of 2004 pleading that they have been involved and harassed in this case only because of being closely related to Shri Parkash Singh Badal, the former Chief Minister of Punjab. Terming this case to be a classic case of political vendetta, the petitioners have made a grouse of their arrest and involvement and the consequent seizure of their Bank accounts, lockers and FDRs by the Vigilance Bureau. FIR No.22 dated 29.8.2002 was registered by the Vigilance Bureau, Flying Squad-I, Punjab, Mohali under Sections 13(1) (e) read with Section 13(2) of the Prevention of Corruption Act coupled with Section 120-B IPC against one Hardeep Singh, who worked as officer on special duty (OSD) to Shri Parkash Singh Badal. It is alleged that said Hardeep Singh has collected wealth disproportionate to his known sources of income by employing illegal and corrupt methods, while working as O.S.D. to Parkash Singh Badal, Ex-Chief Minister. Petitioner No.1, who was statedly on holidays with his wife at Shimla, was allegedly picked up by Vigilance Bureau officials in an illegal and arbitrary manner. No documents were allegedly shown to the petitioner when he was forcibly taken to an undisclosed destination. His wife, petitioner No.2, accordingly gave telegrams to the Chief Justices of Punjab and Haryana High Court, Himachal Pradesh High Court and DGP, Punjab and DGP Himachal Pradesh. Another telegram was given to Chief Justice and the Vacation Judge of this court, highlighting the atrocities being

committed on petitioner No.1, her husband. It is further disclosed that a petition under Article 226 of the Constitution of India, seeking writ of Habeas Corpus was filed in this court on 11.6.2003, when Warrant Officer was appointed to search for petitioner No.1. It is thereafter that he was shown to have been arrested in the present FIR, referred to above. It is then disclosed by the petitioners that not only petitioner No.1 was arrested in this manner, but different Bank accounts, lockers and FDRs, belonging to the petitioners were freezed by the Vigilance Authorities. It is alleged that the State and its authority have abused their power in acting against the petitioners, though they are not even remotely connected with the aforesaid case and are being subjected to harassment and humiliation. Aggrieved against the action of the Vigilance Bureau in freezing the Bank accounts, lockers and FDRs, the petitioners moved separate applications for release of the same standing on their respective names. Both these applications have been dismissed by the Special Judge, Ropar on 16.2.2004, which have now been impugned in the present petition. The case set up by the petitioners is that the impugned orders are bereft of any application of mind where the Judge has acted merely as a rubber stamp and a mouthpiece of the prosecution. Relying upon the provisions of Section 102 Cr.P.C., it is urged that there has been a complete violation of the said provisions, rendering the order of seizure etc. to be illegal, null and void. It is accordingly prayed that the same be set-aside.

Manjinder Singh Kang petitioner in Crl.Misc.No.58233-M of 2004 has filed this petition, seeking quashing of the order passed by Special Judge, Amritsar on similar grounds, pleading victimization

and political highhandedness as he also is close relative of Shri Parkash Singh Badal, the formal Chief Minister of Punjab. He has not disclosed his relationship with Ex.Chief Minister. Petitioner Manjinder Singh Kang has remained as Chairman of the Forest Corporation of Punjab, during the regime of Shri Parkash Singh Badal, FIR No.63 dated 27.9.2002 was registered against him under Sections 409/420/467/468/471 IPC and 13(i)(c)(d)(e) and 13(ii) of the Prevention of Corruption Act at Police Station, Vigilance Bureau, Jalandhar. Apart from arresting the petitioner, Manjinder Singh Kang, Bank accounts, lockers, FDRs belonging to the petitioner and his family members were also freezed by the Vigilance Bureau. Like petitioner Narottam Singh Dhillon, Manjinder Singh Kang also filed an application for release of the FDRs and operation of the Bank accounts before Special Judge, Amritsar (wrongly mentioned in the petition as Special Judge, Ropar), who vide his order dated 6.11.2004 has rejected his prayer in this regard. The impugned order is challenged on the identical grounds by Manjinder Singh Kang also.

Replies have been filed on behalf of the State in both the cases. The allegations of political vendetta have been denied. It is rather disclosed that petitioner Narottam Singh was served a notice under Section 160 Cr.P.C. and he had accordingly attended the office of Vigilance Bureau. Justifying the action in freezing/seizing the lockers, FDRs etc., it is stated that during investigation it was revealed that petitioner Narottam Singh was a conduit in converting the ill-gotten black money of Hardeep Singh, who was OSD to Ex-Chief Minister, Punjab. It is also disclosed that during investigation it was revealed that he was having no money before the date Shri

Parkash Singh Badal assumed the office of the Chief Minister, Punjab and thereafter he converted the black money of Badals to the tune of crores of rupees by depositing it in his accounts at the first instance and subsequently paying it to Badals for Orbit Resorts & others ventures. Suspecting that the money and articles lying in the lockers were apparently the part of same money, which he had either got directly through Badals or through Hardeep Singh, OSD to Ex-Chief Minister, the order seizing the same was made. It is also claimed that this was well within the powers of the Vigilance Bureau. Besides, it is further averred in the reply that petitioner Narottam Singh is an absconder of U.S. Government and warrants of his arrest have been issued by the law courts at California. He has allegedly advanced loans through cheques to Shri Parkash Singh Badal, Smt.Surinder Kaur Badal and Shri Sukhbir Singh Badal at lower rates of interest than those he had taken from the banks. The reply filed by the State would also disclose that Hardeep Singh is still absconding and challan, after completing the formalities, has been presented in the court of Special Judge, Ropar. The plea of innocence, as raised by the petitioners, accordingly is strongly controverted by the State besides disclosing that the investigation has revealed a clear and complete nexus between petitioner Narottam Singh and the main accused Hardeep Singh and Shri Parkash Singh Badal etc. to the effect that he was helping them out by converting the black money into white. Under these circumstances, action of Special Judge, Ropar in dismissing the applications of the petitioners has been justified.

Similarly the order passed in the case of Manjinder Singh

Kang petitioner has been justified in the reply filed by the State. It is stated that the properties, which have been ordered to be attached during investigation, are the ill-gotten wealth collected by accused Manjinder Singh Kang in his capacity as a public servant and these properties are likely to be confiscated to the State under Section 452 Cr.P.C. read with Criminal Law Amendment Ordinance, 1944. Accordingly, it has been prayed by the State that both the petitions deserve to be dismissed.

The application moved by Narottam Singh Dhillon before Special Judge, Ropar is not placed on record. It is also otherwise not disclosed as to under what provision, this application was filed before the Special Judge, Ropar. It is noticeable from the petitions that the petitioners are apparently taking different stands depending upon their convenience. Initially the case set up was that the Bank accounts/FDRs etc. are not a property and not open to be seized. However, when this aspect was clarified by the State on the basis of judgment of the Hon'ble Supreme Court in the case of State of Maharashtra v. Tapas D.Neogy, (1999) 7 Supreme Court Cases 685, the petitioners then changed stance to urge that there had been a violation of mandatory provisions of Section 102 Cr.P.C., rendering the order of seizure to be bad. The perusal of the impugned orders, Annexures P-2 and P-3, would show that only ground pleaded in the applications seeking release of the Bank accounts etc. was that the money was needed for day-to-day expenses and for defending the cases in the Court. The stand of the petitioners in the application, as noticed in the impugned order, may be referred here which is as under:-

> “That the applicants need money for day to day expenses and the Vigilance Bureau has no authority to freeze the account. Therefore, it is prayed that the accounts be released and the applicant be permitted to operate the account and the lockers”

It is, thus, clear that no prayer was made before the Special Judge in terms of the contents of Section 102 Cr.P.C. as is now urged. It would be debatable if the plea, which was not raised before the Special Court, can be permitted to be raised while impugning the order in this regard passed by the Special Judge. In this regard, a reference can be made to the observations of the Hon'ble Supreme Court in Radha Kishan v. State of Uttar Pradesh, AIR 1963 Supreme Court 822, where the Hon'ble Supreme Court declined to go into the aspect of contravention of provisions of Section 342 Cr.P.C. when no grievance in this regard was raised either before the Court of Addl.Sessions Judge or before the High Court. It was further observed that a point as to the prejudice to the accused appellant cannot be allowed to be raised for the first time in an appeal as whether there was prejudice is a question of fact. Leaving this aspect aside, let us see if impugned order can be termed illegal and infirm in any manner on the grounds as now pleaded.

It appears that the petitioners are not challenging the power of the police or its authority to seize the Bank accounts, it being a property. It is, however, submitted that having done so, the respondents were bound to comply with the requirement of Section

102 Cr.P.C., which is termed to be mandatory in nature. It is accordingly submitted that since this mandatory requirement has not been followed, the order seizing the property is required to be revoked. In this regard, strong reliance has been placed on the case of R.Chandrasekar v. Inspector of Police, Salem and another, 2003 (1) R.C.R.(Criminal) 503. The counsel for the petitioners would also refer to the case of Ms.Swaran Sabharwal v. Commissioner of Police, 1988 Crl.L.J.241 in support of his submission.

During the course of arguments, it was also submitted that no order seizing the accounts has been made, which of course was vehemently refuted by the learned State counsel. In this regard, order dated 13.6.2003 passed by the Superintendent of Police was referred and shown during the course of arguments. The learned State counsel otherwise also would say that the requirement, as laid down in Section 102(3) Cr.P.C., would not be mandatory in nature and as such may reveal only irregularity and even if not complied with, order would not be rendered void or vitiated. He would also submit that the nature of property is such which could not have been produced before the court and the basic purpose for provisions of Section 102 Cr.P.C., specially relating to requirement of reporting the seizure to the Magistrate, is for passing an order regulating the disposal of the property during the course of investigation, if it is subject to decay etc. He would also contend that once the application was moved on 16.12.2004, it would mean that the Special Judge in this case was informed about the seizure and hence the requirement of Section 102(3) Cr.P.C. would stand satisfied. Learned State counsel would further contend that it is required to be seen if

this has resulted in any prejudice to the petitioners. He would then contend that this case is very peculiar in its nature and is the one where ill-gotten wealth of very highly placed political figure was converted from black to white and all transactions in this regard conducted by the petitioners would need very careful scrutiny. Accordingly, this ill-gotten wealth would escape scrutiny and investigation if the order seizing the same is interfered. It would also escape confiscation and order under Section 16 of the Prevention of Corruption Act if required. He would accordingly submit that even if the Magistrate was not informed in time about this seizure, it would, at the most, be an irregularity, which may not call for interference for quashing of the order of seizure made in this case.

Before proceedings further, it may be seen if the provisions of Section 102(3) Cr.P.C. can be said to be mandatory or directory in nature. It is well understood that non-observance of a mandatory condition is fatal to the validity of the action. However, non-observance would not matter if the condition is found to be merely directory. In other words, it is not every omission or defect which entails the drastic penalty of invalidity. As per Prof.Wade some conditions may be both mandatory and directory: mandatory as to substantial compliance, but directory as to precise compliance. Giving example in this regard, Prof.Wade observed that where a local authority was empowered to assess coast protection charges on landowners within six months but did so after twenty-three months, the delay was so excessive that there was total non-compliance with the condition, and the assessments were void; but had the excess been a few days only, they would probably have been valid. It was

observed in Re Bowman [1932] 2 KB 621 that the Court may readily find reasons for overlooking trivial or unimportant irregularities. It is a question of construction, to be settled by looking at the whole scheme and purpose of the Act and by weighing the importance of the condition, the prejudice to private rights, and the claims of the public interest. It was further observed that in any case, judges faced with these questions of construction may regard categories such as mandatory and directory as presenting `not so much a stark choice of alternatives but a spectrum of possibilities in which one compartment or description fades gradually into another'. Even it is possible for whole areas of statutory law to be treated as merely directory. Requirements which are less substantial, and more like matters of mere formality, may fall on either side of the line. In short, it will depend upon the provisions of the statute. Where the effect is penal scrupulous observance of statutory conditions can normally be required. The Hon'ble Supreme Court in the case of Nasiruddin and Ors. v. Sita Ram Agarwal, JT 2003(2) SC 56 held that it is well-settled that the real intention of the legislation must be gathered from the language used. It may be true that the use of the expression `shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well-settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character. Referring to Sutherland, Statutory Construction, 3rd edition, Vol.3 at p.107, the Hon'ble Supreme Court pointed out as under:-

> “Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified.....It is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p.109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow noncompliance with the provision.

At p.111 of the above noted edition, it is stated as follows:-

“As a corollary of the rule outlined above, the fact that no consequences of noncompliance are stated in the statute, has been considered as a factor tending

towards a directory construction. But this is only an element to be considered, and is by no means conclusive."

Applying the above-noted test to the contents of the provisions of Section 102(3) Cr.P.C., it can be seen that after laying down the requirement of reporting the seizure, the section further itself provides for exception in cases where the property seized is such that it cannot be conveniently transported to the court etc..... The consequences of non-reporting about the seized property have also not been provided under the section. In addition, the requirement of reporting in the manner, as stated, is on the part of a public functionary and in view of the law laid down by the Hon'ble Supreme Court, as noticed above, the same is required to be held to be directory unless the consequences thereof are specified. Since the consequences therefor have not been specified, it would be safe to say that requirement of Section 102(3) Cr.P.C. cannot be termed as mandatory but would be directory in nature.

In R.Chandrasekar's case (supra) though it was observed that notice as required under Section 102(3) Cr.P.C. was not served yet the main reason for revoking the order passed in this case was on different premise. It was noticed that when a property is not found under circumstances creating suspicion of the offence having been committed, then Section 102 Cr.P.C. does not apply. Section 102 Cr.P.C. empowers the police officers to seize any property, which may be alleged or suspected to have been stolen or which is found under circumstances, which creates a suspicion of commission of an offence. In R.Chandrasekar's case (supra) the position was found

different as is clear from the following observations:-

> “In the case on hand, the position is different. Here it is not the discovery of property that has created suspicion that an offence has been committed. There are no circumstances attendant upon the bank account or its operation that have led the police to suspect that some offence has been committed somewhere. The allegation of the prosecution is that the bank account in this case is a sequel to the discovery of the commission of the offence. This is not sufficient to attract Section 102 of Cr.P.C. as it cannot be since (sic) that the bank account has been traced or discovered in circumstance which have made the police aware of the commission of an offence.”

Even otherwise, this case apparently was decided having regard to the facts peculiar to this case. Respondents in this case had attempted to establish that some funds were suspected to be transferred by the petitioner's father to the petitioner's Bank account in this case, which was not considered sufficient to attract Section 102 Cr.P.C. It was in this context that basic reference was made that even the requirement of Section 102 Cr.P.C. that the police officer was required to report the same to the Magistrate and give notice to the petitioners was not followed. Similar is the position in the case of Ms.Swaran Sabharwal's case (supra). It was also a case where discovery of bank account being a sequel to discovery of commission of offence under Official Secrets Act and it was in this context said

that Section 102 Cr.P.C. cannot be invoked. It is neither the case of the petitioners nor it appears to be so that discovery of the bank account is sequel to the discovery of the offence. As already noticed, the present case appears to be standing on its own facts, which are peculiar in nature. Here the allegations against the petitioners are that they were not having any money and were used as a conduit to convert crores of rupees of Ex-Chief Minister through his O.S.D. from black to white. Even the investment of money in this manner has been traced to Orbit Resorts. This is not a normal case of seizure of accounts, but this amount apparently may not be belonging to the petitioners. The investigation obviously cannot be scuttled, which may establish a nexus between the transactions in the Bank accounts/FDRs with that of other persons, like Chief Minister Shri Parkash Singh Badal and his OSD Hardeep Singh. One cannot turn a blind eye to a fact that Hardeep Singh OSD has so far succeeded to evade law and is a proclaimed offender since long. The petitioners and their co-accused have, as such, obviously been able to scuttle the full investigation in this case by avoiding the process of law. It is in these peculiar facts and circumstances, the requirement of seizure and the fact of alleged non-compliance of some of the requirements may need to be appreciated. Learned State counsel, in this regard, was not un-justified in referring and relying upon the law laid down by the Hon'ble Supreme Court in the case of Tapas D.Neogy (supra) where finding fault with the judgment of the High Court, the Hon'ble Supreme Court held as under:-

> “Having considered the divergent views taken by different High Courts with regard to the power of seizure under

Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be “property” within the meaning of the said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the accused or any of his relations is “property” within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into. The contrary view expressed by the Karnataka, Gauhati and Allahabad High

Courts, does not represent the correct law. It may also be seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount or the value of the property which the accused person has obtained by committing an offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating his account, and so, we do not interfere with the same."

It may be a worth notice that the Hon'ble Supreme Court took the above noted view after considering the divergent view

expressed by different High Courts in this regard as is noticed in the judgment. Thus, it cannot be disputed that the police would have power to seize the property, which would include Bank accounts etc. The observation made by the Hon'ble Supreme Court, as noticed above, in regard to the underlying object for engrafting the provisions of Section 102 Cr.P.C. may need to be stressed here. As observed by the Hon'ble Supreme Court that if there was no order of seizing the Bank account of the accused, then the entire money deposited in the Banks, which is ultimately held in the trial to be the outcome of the illegal gratification etc., could be withdrawn by the accused and the Courts would be powerless to get the said money, which has any direct link with the commission of offence committed by the accused as a public officer. Division Bench of this Court in Dr.Gurcharan Singh v. The State of Punjab, 1978 PLR 514 has similarly held as under:-

> “The other fact of the argument would be that in case the bank account is not held to be property capable of being seized under section 102 of the Criminal Procedure Code, it would lead to the very destruction of the Bank account defeating the very basis of the prosecution. In case the petitioner is permitted to withdraw his amount, nothing would remain to be proceeded against for confiscation under section 452 of the Criminal Procedure Code and that right of confiscation is very much there with the Court. Therefore, it would be very appropriate to hold that the Bank account with respect to which the offence of criminal misconduct was committed is the property

capable of being seized under section 102 of the Criminal Procedure Code.

This underlying object in legislating the provisions of Section 102 Cr.P.C. as observed by Hon'ble Supreme Court is well pronounced in the present case. Here is a case where not only the money is ill-gotten but is the one which is allegedly dubious in nature and character and has followed a course, which in itself would be an offence violating various provisions of law of our country. The account appears to be having due link with the offence, which is being investigated and thus can be seized as held by the Hon'ble Supreme Court. In the case of Anwar Ahmad v. State of U.P., AIR 1976 Supreme Court 680, the Hon'ble Supreme Court, while holding that the police would not have any power to release the property seized on superdari, observed as under:-

> “Before closing this judgment, we would like to observe that even in the new Criminal Procedure Code, there is no express provision which empowers the police to get a bond from the person to whom the property seized is entrusted. This may lead to practical difficulties, for instance in cases where a bulky property, like an elephant or a car is seized and the Magistrate is living at a great distance, it would be difficult for a police officer to report to the Magistrate with the property. In these circumstances, we feel that the Government will be well advised to make suitable amendments in the Code of Criminal Procedure to fill up this serious lacuna by giving power to the police for taking the bond in such

> circumstances. We would also like to make it clear that since the bond is legally invalid, it is not enforceable under Section 514, Criminal P.C., but we refrain from making any observation regarding any other liability of the appellant under the law. For the reasons given above, we allow this appeal, set aside the orders of the courts below and discharge the appellant from the bond."

Accordingly, the requirement of reporting to the Magistrate may need to be appreciated in background as observed above. The petitioners never raised any grievance before the Special Judge for release of their accounts on the ground that provisions of Section 102(3) Cr.P.C. were violated. No enabling provision to maintain this application seeking release of the accounts seized was pointed by the counsel for the petitioners. If the seizure of the property can not be faulted, then its release has to be under some relevant provisions to the Code. Such a provision is available in the form of Section 457 Cr.P.C. In Gagan Bihari Das v. The State, 2002 (4) RCR (Crl.) 423, it was held:-

> "Coming to the facts of the present case, it is clear that trial had not been concluded and, therefore, Section 452, Cr.P.C. with regard to disposal of property is not applicable and Section 457(2), Cr.P.C. shall be applicable. Another decision of Madhya Pradesh High Court in the case of **Ganeshi Lal Ranchhoddas Mahajan v. Satya Narain Tiwari reported in AIR 1958 Madh.Pra.39**, dealing with old Section 523 (Section 457

in the new Code) observed as follows:

"Section 523 applies to property seized by the police of their own accord as distinct from property seized under a warrant issued by Court and therefore will include even cases where the property was seized by Court and therefore will include even cases where the property was seized by the police during investigation. Therefore where the property brought into the Court by the police in proceedings under Section 512 was seized by the police because it was suspected to be connected with the commission of a crime, Section 523 would apply to the case and the Court has jurisdiction to pass an order regarding the disposal of the property."

In view of the aforesaid decisions, the only way to determine the entitlement of the present petitioners is to make an enquiry as envisaged under Section 457(2), Cr.P.C. what is to be decided by the Court in such an event has been explained by this court in the case of **Prabhat Kumar Das v. Bijoy Prasad Das reported in (1980) 50 Cut LT 415** by this Court in another decision in the case of Mahommed Zariff v. Sk.Zinaullah reported in (1987) 2 Orissa LR 283: (1988 Cri LJ 55). The observations made by the Court in both the decisions are quoted below:-

"5. The scope of Sec.457 of the Code of Criminal Procedure has been the subject matter of judicial discussion from time to time. The Law, however, is settled

so far as this Court is concerned by a decision of P.K.Mohanti, J.(as he then was) in Prabhat Kumar Das v. Bijoy Prasad Das, (1980) 50 Cut LT 415. The Law was stated in these terms:-

"Under the provisions of Section 457, Criminal Procedure Code, if the Magistrate orders delivery of the property he has to deliver it to the person entitled to the possession thereof. He has to satisfy himself from the records and materials available before him that the person to whom the delivery is ordered is entitled to possession. If the materials are not sufficient, he can make an enquiry into the matter by giving opportunity to the claimants before passing the order. In doing so, the Magistrate should confine himself only to find out as to who is entitled to possession of the property but not the title or ownership thereof. A person may be in unlawful possession, at the time of seizure and in that circumstance, it cannot be said that he is entitled to possession. It must be a lawful possession. The test, therefore, is not the mere possession of the property at the time of seizure, but as to who is entitled to lawful possession. The expression `entitled to possession' is the sine qua non for the delivery of property under Section 457, Criminal Procedure Code."

Accordingly, the property seized can be released to a person entitled to possession thereof. It is the case of prosecution that this property is either of Hardeep Singh or Parkash Singh Badal

and it would be revealed only after investigation that this property belongs to the petitioner or is held by him having been converted through him. The aspect of the effect of search and seizure even if illegal is also to be taken into consideration. The learned State counsel has made reference to various judgments to say that illegal search cannot lead to seizure being vitiated. Counsel would draw support from observations in the case of Radha Kishan v. State of Uttar Pradesh, 1963 SC 822, State of Maharashtra v. Natwarlal Damodardas Soni, 1980 SC 593. Learned State counsel has also drawn my attention to the observation of the Hon'ble Supreme Court in Dr.Partap Singh and another v. Director of Enforcement, Foreign Exchange Regulation Act and others, 1985 SC 989 to urge that even if search and seizure is found to be not legal or invalid, return of documents/articles cannot be ordered. Relevant observations are as under:-

> “It was urged that if there was no justification for issuing a search warrant, the search under the authority of such a warrant would be illegal and the respondents 1 to 4 are bound to return the documents. If the officer who issued the search warrant had material for forming a reasonable belief to exercise the power, the search cannot be styled as illegal and therefore, no case is made out for directing return of the documents on the supposition that the search and seizure were illegal.”

It was not the case of counsel for the petitioner that this search or seizure is unconstitutional as in that event certain consequences can follow as noticed by the Hon'ble Supreme Court

in State of Gujarat v. Shyamlal Mohanlal Choksi, AIR 1965 SC 1251. The provisions of reporting to the Magistrate (in this case to the Special Judge), would only be to ensure an order of the disposal of the property either on superdari or otherwise during the pendency of the case/investigations under Section 457 Cr.P.C. This purpose, in my view, stood achieved when the petitioners themselves moved applications for release of their accounts and FDRs on the ground that these were needed for day to day affairs. This application was not moved under Section 457 Cr.P.C., as the counsel for the petitioners could not disclose the provision under which the application was moved despite repeated queries. The intention of the petitioners obviously is to utilise this amount during the pendency of the case. The main reason which weighed with the Hon'ble Supreme Court in the case of Tapas D.Neogy (supra) was that a prolonged case may lead to utilisation of the money by the accused and then it may not be available for confiscation or otherwise as can be ordered in such cases.

During the course of arguments it was also pleaded that no challan, after investigation, has been filed against the petitioners and as such the seizure of accounts etc. may not be justified. The State counsel, however, rebutted the same and disclosed that challan earlier had been presented against Hardeep Singh OSD and has now also been filed against the petitioners. The money and the FDRs ordered to be seized in this case are clearly found under the circumstances, which create a suspicion of commission of an offence not only against the petitioners but some other accused persons, who are very highly placed. It is because of their position that they

have been able to escape the process of law so far.

Even the Hon'ble Supreme Court, while deciding Appeal (civil) 5636 of 2006 (Parkash Singh Badal and Anr v. State of Punjab and Ors), on 6.12.2006, observed that petitioner Narottam Singh Dhillon is instrumental in converting the black money of Parkash Singh Badal and others for which they have been directed to face trial and prosecution. Findings of the Hon'ble Supreme Court in this regard may be noticed:-

> “A plea has been taken that charge sheet is a bundle of confusions and no definite material is placed on record to substantiate the allegation of commission of any offence. This assertion has been refuted by learned counsel for the respondent-State with regard to various definite materials indicating commission of offence. Particular reference has been made to the following:
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> Pages 396-397, Volume 3 discloses how Rs.9 crores were recycled by Badal family through the accounts of K.S.Sidhu into the project ORBIT Resort. Pages 398-399, 404-407, 416-420, 448 establishes facts showing recycling of several crores of rupees with the aid of Narottam Singh Dhillon, an NRI and close to Badal family. Illegally earned money used to be deposited in the account of Narottam Singh Dhillon who used to then get FDRs issued and thereafter used to take loans against the FDRs. His bank account shows operation during 1997-2002. This loan money has been given to Parkash Singh Badal, S.Kaur and Sukhbir Singh Badal as loans

which have never been returned. This recycling involved making of fake entries in the bank. There is evidence showing taking of gratification in transfers, postings and promotions....."

Not only this, any property, which is ill-gotten can be confiscated to the State under the provisions of Criminal Law Amendment Ordinance, 1944 and it can also not be ignored in this regard. In fact, it is surprising to notice that the State has failed to take measures available under the said Ordinance for seizing the property in order to ensure that if required the same can be confiscated to the State. It would be relevant to notice the provisions of Section 3 of this Ordinance, which reads as:-

"3. Application for attachment of property:-(1) Where the [State] Government [or as the case may be, the Central Government] has reason to believe that any person has committed (whether after the commencement of this Ordinance or not) any scheduled offence the [State Government may, whether or not any Court has taken cognizance of the offence, authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment under this Ordinance of the money or other property which the [State] Government believes the said person to have procured by means of the offence, or if such money or property cannot for any reason be attached, of other property of the said person of value as nearly as may be

equivalent to that of the aforesaid money or other property.

(2)The provisions of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908, shall apply to proceedings for an order of attachment under this Ordinance as they apply to suits by the [Government]

(3) An application under sub-section (1) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the said person has committed any scheduled offence is founded, and the amount of money or value of other property believed to have been procured by means of the offence. The application shall also furnish-

(a) any information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, of other property of the said person;

(b) the names and addresses of any other persons believed to have or to be likely to claim, any interest or title in the property of the said person."

In fact this ordinance incorporate the complete procedure for attachment of property, its ad interim attachment, investigation of objection to attachment and even in regard to attachment of property with malafide transferees.

In the case of Manjinder Singh Kang, it was in addition pointed out that the evidence of the prosecution witnesses has been

recorded and the case is at the stage of conclusion.

Since the power to seize the property is clearly available under Section 102 Cr.P.C. and the requirement of informing the Magistrate and the purpose behind the said provision stands achieved, so no infirmity is noticed in the impugned orders. It is not a case of abuse of process of court nor the ends of justice are being defeated in any manner. The petition is without any merit and the same is dismissed.

January 10, 2007 (RANJIT SINGH)
ramesh JUDGE